

CONVICTION REDUCTION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the circumstances under which a reduction of offense level may occur following a conviction.

Highlighted Provisions:

This bill:

- ▶ allows a judge to reduce certain convictions by one or two degrees; and
- ▶ removes the prosecutor's consent requirement to reduce a conviction by a second degree.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-402, as last amended by Laws of Utah 2017, Chapters 282 and 356

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-3-402** is amended to read:

76-3-402. Conviction of lower degree of offense -- Procedure and limitations.

(1) If at the time of sentencing the court, having regard to the nature and circumstances



28 of the offense of which the defendant was found guilty and to the history and character of the
29 defendant, and after having given any victims present at the sentencing and the prosecuting
30 attorney an opportunity to be heard, concludes it would be unduly harsh to record the
31 conviction as being for that degree of offense established by statute, the court may enter a
32 judgment [~~of conviction for the next lower degree of offense~~] lowering the offense conviction
33 by one degree or by two degrees and impose sentence accordingly.

34 (2) (a) If the court suspends the execution of the sentence and places the defendant on
35 probation, regardless of whether [~~or not~~] the defendant is committed to jail as a condition of
36 probation, the court may enter a judgment [~~of conviction for the next lower degree of offense~~]
37 lowering the offense conviction by one degree or by two degrees:

- 38 (i) after the defendant has been successfully discharged from probation;
- 39 (ii) upon motion and notice to the prosecuting attorney;
- 40 (iii) after reasonable effort has been made by the prosecuting attorney to provide notice
41 to any victims;
- 42 (iv) after a hearing if requested by either party described in Subsection (2)(a)(iii); and
- 43 (v) if the court finds entering a judgment [~~of conviction for the next lower degree of~~
44 ~~offense~~] lowering the offense conviction is in the interest of justice.

45 (b) In making the finding in Subsection (2)(a)(v), the court shall consider as a factor in
46 favor of granting the reduction that, subsequent to the defendant's conviction, the level of the
47 offense has been reduced by law.

48 [~~(3) (a) An offense may be reduced only one degree under this section, whether the~~
49 ~~reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in~~
50 ~~writing or on the court record that the offense may be reduced two degrees.]~~

51 [~~(b)~~] (3) In no case may an offense be reduced under this section by more than two
52 degrees.

53 (4) This section does not preclude any person from obtaining or being granted an
54 expungement of his record as provided by law.

55 (5) The court may not enter judgment for a conviction [~~for a lower~~] lowering the
56 degree of offense if:

- 57 (a) the reduction is specifically precluded by law; or
- 58 (b) if any unpaid balance remains on court ordered restitution for the offense for which

59 the reduction is sought.

60 (6) When the court enters judgment [~~for a lower~~] lowering the degree of offense under
61 this section, the actual title of the offense for which the reduction is made may not be altered.

62 (7) (a) A person may not obtain a reduction under this section of a conviction that
63 requires the person to register as a sex offender until the registration requirements under Title
64 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

65 (b) A person required to register as a sex offender for the person's lifetime under
66 Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or
67 offenses that require the person to register as a sex offender.

68 (8) (a) A person may not obtain a reduction under this section of a conviction that
69 requires the person to register as a child abuse offender until the registration requirements
70 under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.

71 (b) A person required to register as a child abuse offender for the person's lifetime
72 under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for the
73 offense or offenses that require the person to register as a child abuse offender.

74 [~~(9) As used in this section, "next lower degree of offense" includes an offense
75 regarding which:]~~

76 [~~(a) a statutory enhancement is charged in the information or indictment that would
77 increase either the maximum or the minimum sentence; and]~~

78 [~~(b) the court removes the statutory enhancement pursuant to this section.]~~

79 (9) A court may, in accordance with this section, remove a statutory sentencing
80 enhancement charged by information or indictment in place of a degree of offense reduction
81 under this section.